

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:23-CV-205

BRANDON S. BAXLEY,)	
)	
Petitioner,)	
)	
v.)	PETITION TO QUASH INTERNAL
)	REVENUE SERVICES SUMMONS
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Petitioner Brandon S. Baxley hereby files this Petition to quash the Internal Revenue Service Summons issued to Mr. Baxley's attorney, Ronald J. Antonelli, because the IRS has failed to properly provide notice of the Summons to Mr. Baxley in accordance with 26 U.S.C. § 7609(a), and because the Summons seeks legal opinions and other confidential advice that are protected from disclosure by attorney-client privilege and the work-product doctrine. A true and accurate copy of the Summons is attached as Exhibit 1. In support of this petition, Mr. Baxley states as follows:

PARTIES AND JURISDICTION

1. Mr. Baxley is a U.S. taxpayer who resides in Wake County, North Carolina.
2. Respondent is the United States of America, acting through its agency, the IRS. Respondent will be served pursuant to 26 U.S.C. § 7609(b)(2)(B) by sending a copy of this Petition by certified mail to Gihan Hanna, Internal Revenue Agent, 7751 Brier Creek Parkway, Suite 108, Raleigh, NC 27617, and by serving the United States of America pursuant to Fed. R. Civ. P. 4(i).
3. Mr. Antonelli is an attorney located in Wake County, North Carolina, who served as outside general legal counsel for Mr. Baxley during the relevant time period. Mr. Antonelli will be served pursuant to 26 U.S.C. § 7609(b)(2) by sending a copy of this Petition by certified mail to his address at 8801 Fast Park Drive, Suite 301, Raleigh, NC 27617.

4. On March 29, 2023, the IRS, acting through Internal Revenue Agent Gihan Hanna, issued the Summons to Mr. Antonelli in connection with the IRS examinations of Mr. Baxley's federal income tax returns for the taxable years 2018 and 2019.

5. Under 26 U.S.C. § 7609(h)(1), a petition to quash an IRS summons should be heard and determined in "[t]he United States district court for the district within which the person to be summoned resides or is found." Upon information and belief, Mr. Antonelli resides in Wake County, North Carolina, and received the Summons there. Accordingly, this Court has jurisdiction over this petition. Venue is likewise proper in this Court.

6. Because Mr. Baxley has not yet received notice of the Summons pursuant to 26 U.S.C. § 7609(a), the 20-day period for filing a petition to quash established in 26 U.S.C. § 7609(b)(2) has not yet begun. In abundance of caution, however, to ensure this Petition is timely, Mr. Baxley is filing the Petition within 20 days of the issuance of the Summons on March 29, 2023.

GROUND FOR RELIEF

7. Petitioner incorporates the preceding paragraphs by reference as if set forth fully below.

8. The Summons includes the following description of the documents sought from Mr. Antonelli with respect to his client, Mr. Baxley (identified as "the above-named individual"):

Please furnish all books, papers, records, and other data concerning all Individual and entities in which the above-named individual(s) is identified as having any ownership interests

- 1- Carolina Landscapes Of Raleigh LLC DBA Carolina Landscapes NC, LLC- Need the partnership agreement, Operating Agreement and the Annual meeting minutes – When Mr. Ronald Kip Ray has sold his interest in the Partnership and what kind compensation he received from the partnership.
- 2- The Sale agreement document regarding the sale with Hunt Forest Resources LLC
- 3- Commercial Holding Corporation LLC , Provide the partnership agreement with Nello Italy LLC and the court case documents in 2015 & 2016.

9. Each of the entities referenced in the Summons (Carolina Landscapes of Raleigh LLC DBA Carolina Landscapes NC, LLC; Hunt Forest Resources LLC; Commercial Holding Corporation LLC) were or are owned and controlled by Mr. Baxley.

10. Under 26 U.S.C. § 7609(a)(1), if an IRS summons “requires . . . the production of any portion of records made or kept on or relating to . . . any person (other than the person summoned) who is identified in the Summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined.”

11. Respondent has not given notice of the Summons to Mr. Baxley as required by 26 U.S.C. § 7609(a)(1). Indeed, the only way Mr. Baxley became aware of the Summons at all was through Mr. Antonelli.

12. The Summons should be quashed due to Respondent’s failure to comply with the applicable notice requirements.

13. The IRS’s power to obtain information by summons is “subject to the traditional privileges and limitations,” including the attorney-client privilege and the attorney work-product doctrine. *Upjohn Co. v. United States*, 449 U.S. 383, 398 (1981).

14. In this case, the Summons requests documents prepared by Mr. Antonelli in his capacity as attorney for Mr. Baxley. The documents requested were personal to Mr. Baxley and he had a reasonable expectation that such attorney work product would be maintained as confidential.

15. Respondent has made no showing of substantial need, undue hardship, or inability to obtain the information it seeks from another source.

16. Mr. Baxley has not waived the protections afforded by the work-product doctrine or attorney-client privilege.

17. Accordingly, the Summons should also be quashed because the documents it seeks constitute legal opinions and other confidential advice that are protected from disclosure by attorney-client privilege and the work-product doctrine.

PRAYER FOR RELIEF

WHEREFORE, Mr. Baxley respectfully requests that the Court grant relief as follows:

1. Quash the Summons in its entirety for the reasons stated herein.
2. Grant such other and further relief in favor of Mr. Baxley as the Court may deem just and proper.

Respectfully submitted, this the 18th day of April, 2023.

MANNING, FULTON & SKINNER, P.A.

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